

SEP. 21. 2005 3:29PM

NO. 8007 P. 76

Application No.: 09/916611

Docket No.: 00306-00142-USU

**EXHIBIT 3**

408430

Attorney Docket No.: 00306-00142

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE****RECEIVED  
CENTRAL FAX CENTER**

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In re Patent Application of:  
Johnnie R. Roberts et al.

SEP 21 2005

Application No.: 09/916611

Confirmation No.: 8709

Filed: August 29, 2005

Art Unit: 1616

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For: **MANUFACTURE AND USE OF A  
HERBICIDE FORMULATION**

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Examiner: A. N. Pryor

**37 CFR 1.132 DECLARATION**

1. I am one of the inventors of the above referenced application. I am employed by Helena Chemical Company as a Director of Product Development and Technical Services in Memphis, Tennessee. A copy of my most recent Curriculum Vitae is attached as Appendix A. In view of the above qualifications, I consider myself an expert in the field of agricultural compositions.

2. I have reviewed the office action which was mailed on November 30, 2004. The examiner has rejected the claims based on composition of AF-300. I have also reviewed and am familiar with AF-300 along with the above identified application.

3. The composition of AF-300 is found on their Material Safety Data Sheet ("MSDS"). MSDS sheet, dated January 2002 (see Appendix 1).

This MSDS sheet shows the following composition:

2,4-Dichlorophenoxy acetic acid at 300 grams per liter  
Synthetic ethoxylated alcohol at 50%  
Solvent 400 at 235 grams per liter.

HCC-11 Declaration 8-3-05 AF-300.DOC

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4. The formula from our Example 1 of the patent application was reproduced. It contained 85% of a C11 alcohol with 3 moles of ethylene oxide, and 15% 2,4-D acid. After the addition of the 2,4-D acid to the ethoxylated alcohol, the formulation became cloudy with chunks of 2,4-D technical dispersed. After 30 minutes of stirring at ambient temperature, the formulation was clear and the 2,4-D acid was fully solubilized. The odor exhibited with this formula, is very mild, and surfactant-like. This is very uncharacteristic of other commercial 2,4-D products. The odor can be a serious problem for applications of 2,4-D in sensitive areas, where neighbors may rightly fear herbicide drift. The flash point of the formula in Example 1 was over 200 degrees F. This places Example 1 in the non-flammable category with regards to shipping and storage.

5. As in the AF-300 disclosed formula, 235 grams per liter of kerosene was added to our Example 1. The solution immediately took on the odor of kerosene. Kerosene has an objectionable odor to most people, and may indicate to many neighbors that a herbicide application has been made nearby. Their real concern is really with herbicide drift, and when chemicals odors are detected, neighbors may be rightly concerned about injury to non-target plants.

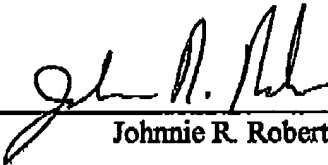
6. The flash point of the kerosene containing formulation was 128 degrees F. This would require that shipments of this formula made by air would be classified as combustible. (See attached citation from 49 CFR 173 as Appendix B. Shipments made by ground would be considered combustible. Many states have strict requirements for storage of both combustible and flammable products. This could require consumers who store this product to make expensive modifications of their storage and containment areas.

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7. I hereby declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

9-19-05

Date

  
Johnnie R. Roberts